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10/688,283	10/16/2003	Stephen Loomis	AOL0115	9200

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GLENN PATENT GROUP  
3475 EDISON WAY, SUITE L  
MENLO PARK, CA 94025

EXAMINER
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KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
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2154

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10/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/688,283

Applicant(s)

LOOMIS ET AL.

Examiner

Michael E. Keefer

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 1002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/23/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This Office Action is responsive to the Application filed 10/16/2003.
2. Claims 3, 13, and 23 as well as 19-20 and 29-30 are objected to because of the following informalities:

it is suggested that the phrase "the client" appearing in claims 19-20 and 29-30 should be deleted and replaced with the phrase --the distribution point--.

It is suggested that the phrase "the loop" appearing in claims 3, 13, and 23 be deleted and replaced with the phrase --a loop-- to improve the clarity of the claims.

Appropriate correction is required.

3. Claims 7-8, 16, and 22-26 are objected to because of the following informalities:

It is suggested that claims 7-8 should depend from claim 6 instead of claim 5, as claim 5 has no recitation of 'metadata'.

It is suggested that claim 16 should depend from claim 11 instead of claim 1.

It is suggested that claims 22-26 should depend from claim 21 instead of claim 1, as claim 1 has no recitation of a system.

The examiner, for purposes of prior art rejections will be evaluating the claims as having the dependencies suggested above.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3, 13, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "DMCA compliant" appearing in claims 3, 13, and 23 is unclear and indefinite because there is no suggestion in the claim, or in the specification what makes a loop "DMCA compliant". Additionally, the Examiner suggests in claim 3 that Digital Millennium Copyright Act be written out fully with DMCA in parenthesis to further clarify the claim.

The Examiner will interpret "DMCA compliant" in these claims for the purposes of analysis under prior art to mean that there is some form of digital rights management (DRM) to protect a content owner's content.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 9, 11-12, 19, 21-22, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Lambert (US 2002/0091761).

Regarding claims 1, 11, and 21, Lambert discloses:

Art Unit: 2154

receiving a schedule for content delivery; ([0043] discloses the identification of a list of channels (i.e. receiving a schedule of channels that can be delivered)

receiving a plurality of content; ([0043] each channel/stream is received)

constructing the stream of the content based on the schedule; and

transmitting the stream of the content to at least one client. ([0047 discloses that each segment of the schedule of channels is streamed to the client, creating a new stream based off of the listing of channels discovered.)

Regarding **claims 2, 12, and 22 as applied to claims 1, 11, and 21**, Lambert discloses:

Looping the stream. ([0047] discloses playing through the schedule repeatedly, unless more channels are added, in which case it would then play through that schedule repeatedly.)

Regarding **claims 9, 19, and 29, as applied to claims 1, 11, and 21**, Lambert discloses:

The client is a computer. (Fig. 3 client 200)

8. Claims 1, 3-5, 9-11, 13-15, 19-21, 23-25 and 29-30, are rejected under 35 U.S.C. 102(e) as being anticipated by Klements et al. (US 2003/0236906), hereafter Klements.

Regarding **claims 1, 11 and 21**, Klements discloses:

receiving a schedule for content delivery; ([0074] discloses the player receiving a list of multiple pieces of content)

receiving a plurality of content; ([0074] discloses the multiple pieces of content being received by the player)

constructing the stream of the content based on the schedule; and transmitting the stream of the content to at least one client. ([0074] discloses streaming the cached content to a user upon demand or at a prescheduled time.)

Regarding **claims 3, 13, and 23**, Klements discloses:

A loop (i.e. cache) is DMCA compliant, see at least [0082] which describes methods by which a content owner may allow content to not be cached. (i.e. looped.)

Regarding **claims 4-5, 14-15, and 24-25**, Klements discloses:

Content is audio and/or video content. ([0002] discloses both audio and video content.)

Regarding **claims 9, 19, and 29**, Klements discloses:

The client is a computer (Fig. 2, item 102)

Regarding **claims 10, 20 and 30**, Klements discloses:

Matching the rate of play of the stream to the rate of play of the client. ([0044] discloses negotiating the rate of play of a stream between a client and server.)

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2154

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 12, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemets as applied to claims 1, 11, and 21 above, and further in view of Hose et al. (US 2003/0048418).

Klemets discloses all the limitations of claims 2, 12, and 22 except for repeating a loop (i.e. a playlist).

The general concept of repeating a playlist (loop) until new schedule or content information is added is well known in the art as taught by Hose. ([0063] teaches a playlist which repeats)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Klemets and the general concept of repeating a playlist (loop) until new schedule or content information is added as taught by Hose in order to allow continuous music listening without having to manually indicate that a playlist should start again each time it is completed.

11. Claims 6-7, 16-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemets as applied to claims 1, 11, and 21 above, and further in view of Addington (US 2003/0028893).

Klemets discloses all the limitations of claims 6-7, 16-17, and 26-27 except for incorporating metadata indicating content duration into the stream.

The general concept of incorporating metadata indicating content duration into a stream is well known in the art as taught by Addington. ([0030] discloses including metadata indicating a duration of the stream into the stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Klemets and the general concept of incorporating metadata indicating content duration into a stream as taught by Addington in order to allow the user to see the length of time a stream will take to play.

12. Claims 6-7, 16-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert as applied to claims 1, 11, and 21 above, and further in view of Addington (US 2003/0028893).

Lambert discloses all the limitations of claims 6-7, 16-17, and 26-27 except for incorporating metadata indicating content duration into the stream.

The general concept of incorporating metadata indicating content duration into a stream is well known in the art as taught by Addington. ([0030] discloses including metadata indicating a duration of the steam into the stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Lambert and the general concept of incorporating metadata indicating content duration into a stream as taught by Addington in order to allow the user to see the length of time a stream will take to play.

13. Claims 6, 8, 16, 18, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lambert as applied to claims 1, 11, and 21 above, and further in view of Costello et al. (US 6609097), hereafter Costello.

Lambert discloses all the limitations of claims 6, 8, 16, 18, 26, and 28 except for incorporating metadata indicating time remaining into the stream.



The general concept of incorporating metadata indicating time remaining into a stream is well known in the art as taught by Costello. (Col. 9 lines 9-11 teach including remaining play time as metadata with a stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Lambert and the general concept of incorporating metadata indicating time remaining into a stream as taught by Costello in order to allow the user to see a remaining play time for a stream.

14. Claims 6, 8, 16, 18, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemets as applied to claims 1, 11, and 21 above, and further in view of Costello et al. (US 6609097), hereafter Costello.

Klemets discloses all the limitations of claims 6, 8, 16, 18, 26, and 28 except for incorporating metadata indicating time remaining into the stream.

The general concept of incorporating metadata indicating time remaining into a stream is well known in the art as taught by Costello. (Col. 9 lines 9-11 teach including remaining play time as metadata with a stream.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Klemets and the general concept of incorporating metadata indicating time remaining into a stream as taught by Costello in order to allow the user to see a remaining play time for a stream.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2005/0114757 teaches a method of creating a stream from multiple independent sources.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571) 270-1591. The examiner can normally be reached on Monday through Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 9/20/2007

  
NATHAN FLYNN  
SUPERVISORY PATENT EXAMINER